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Promotion and protection of the rights of children

Sale of children, child prostitution and child pornography

Note by the Secretary-General**

The Secretary-General has the honour to transmit to the members of the General Assembly, in accordance with Commission on Human Rights resolution 2000/85 and Economic and Social Council decision 2000/280, the interim report prepared by Ofelia Calcetas-Santos, Special Rapporteur of the Commission on Human Rights on the sale of children, child prostitution and child pornography.

* A/55/150.
** In accordance with General Assembly resolution 54/248, sect. C, para. 1, this report is being submitted on 10 August 2000 so as to include as much updated information as possible.

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Report of the Special Rapporteur of the Commission on Human Rights on the sale of children, child prostitution and child pornography

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I. Introduction

1. The present report is submitted in accordance with Commission on Human Rights resolution 2000/85, "Rights of the child", of 28 April 2000, in which the Commission expressed its support for the work of the Special Rapporteur on the sale of children, child prostitution and child pornography; called upon States to cooperate closely with her and furnish all information requested, inter alia, by inviting her to visit their countries; invited further voluntary contributions through the Office of the United Nations High Commissioner for Human Rights (UNHCR) and all the necessary human and financial assistance to be provided for her work for the effective fulfilment of her mandate and to enable her to submit an interim report to the General Assembly at its fifty-fifth session and a report to the Commission at its fifty-seventh session

II. Working methods and activities

A. Working methods

2. In her previous reports, the Special Rapporteur focused on the three elements of her mandate — namely, sale of children, child prostitution and child pornography — as they pertain to commercial sexual exploitation. Very early on she identified three catalysts which she believes are both causative and preventive of commercial sexual exploitation: the justice system, the media, and education. The crucial role that these catalysts play has been validated throughout her research. It soon became apparent that the role of another catalyst — perhaps the most fundamental — needed to be examined: the family. In a vast number of cases where a child has been exploited, the roots of the exploitation can be traced back to the familial situation.

3. In order to obtain a comparative overview of developments relating to domestic violence and commercial sexual exploitation, in June 1999 the Special Rapporteur sent a circular to all Governments, relevant United Nations bodies and agencies, and intergovernmental and non-governmental organizations, soliciting information to be used in her report to the Commission on Human Rights, on the following:

(a) Studies that have been carried out in this regard, especially those considering the link between abuse and neglect in the home and subsequent entry into prostitution;

(b) How cases of abuse and neglect come to the attention of Governments, agencies and organizations;

(c) Statistics regarding domestic violence and neglect:

(i) What are the types of relationships between the abuser and abused (i.e., husband/wife, parent/child, domestic partners etc.)?

(ii) What is the frequency of the abuse?

(iii) What is the specific type or nature of abuse that the Government, organization etc. has had experience of?

(d) The legal structure to deal with situations of abuse and neglect:

(i) Who can bring a complaint on behalf of the abused/neglected child?

(ii) Who has primary care of the child after a complaint has been filed?

(iii) What action is taken after cases of domestic violence are reported?

(iv) What legal or other resources are available to children who have been abused or neglected?

(e) Any national, regional or international initiatives that have been taken to reduce the incidence of domestic violence and neglect.

4. By July 2000, replies had been received from the following Governments: Benin, Canada, Chile, Columbia, Cyprus, Denmark, France, Fiji, Guatemala, Iraq, Mexico, Morocco, Norway, Qatar, Singapore, Slovakia, South Africa, Switzerland, Togo, Tunisia, Turkey, the United Kingdom of Great Britain and Northern Ireland, and the United States of America. Replies were received from the following non-governmental organizations: American Psychological Association; Amnesty International; Caribbean Child Development Centre, Jamaica; Ecumenical Network for Youth Action, Czech Republic; ECPAT; Focal Point on Sexual Exploitation; Network against Sexual Exploitation of Children, South Africa; Radda Barnen; Terre des hommes; and from the following United Nations agencies and international bodies: United

Nations Population Fund (UNFPA), the United Nations Children's Fund (UNICEF), the United Nations Development Programme (UNDP), the World Health Organization (WHO), the World Trade Organization (WTO), and the European Union (EU). Some of the information provided in the replies was contained in the Special Rapporteur's report to the Commission on Human Rights at its fifty-sixth session (E/CN.4/2000/73). Information received from the Governments of Chile, Denmark, Fiji, France, Guatemala, Mexico, Norway, Singapore, Tunisia, Turkey, the United Kingdom and the United States and from WHO is reflected in the present report.

Follow-up to country visits

5. In the follow-up to country missions that the Special Rapporteur had carried out, in July 1999 she wrote to the Governments of the Czech Republic, the United States, Kenya, Mexico, and the Lao People's Democratic Republic, and received a response from the Government of Mexico. In May 2000, she wrote again to the other four Governments and also to the Governments of Belgium, the Netherlands, Guatemala, and Fiji, and received a response from the Government of Guatemala. In her letters she sought the cooperation of the Governments in assessing the response to the recommendations made in her reports and expressed her interest in learning about developments and initiatives within the sphere of her mandate which had taken place or been enacted since her visit. She urged the eight Governments that had not yet responded to provide her with that information, which would enable her to produce an accurate assessment of the impact of all of her missions.

6. The paragraphs below contain a brief summary of the information provided by Mexico and Guatemala. The Special Rapporteur commends the efforts of both Governments to address children's concerns in their countries as a matter of urgency.

Mexico

7. The Special Rapporteur visited Mexico in November 1997 (see E/CN.4/1998/101/Add.2). In January 1999, the Mexican Congress agreed to amend certain provisions of the country's criminal code in respect of crimes against children. Crimes related to child pornography and child prostitution are now categorized as "grievous crimes", and child sex tourism is now subject to penal sanction, in that any person who publicizes, invites, facilitates or processes by whatever means travel by individuals or persons to the interior or outside the national territory with the aim of having sexual relations with persons under the age of 18 years old will be given a prison term of from 5 to 14 years and a fine equivalent to from 100 to 10,000 days of minimum wage. The same penalties will apply to anyone who takes actions that facilitate the individuals or persons obtaining sexual relations with a person under the age of 18.

Guatemala

8. The Special Rapporteur visited Guatemala in July 1999. The Government advised the Special Rapporteur that, later in 1999, a study of adoptions in Guatemala was carried out with the support of UNICEF, the Instituto Latinoamericano para la Educación y la Communicación (ILPEC) and the Comisión Presidencial Coordinardora de la Politicia del Ejectivo en Materia de Derechos Humanos (COPREDEH). The study brought to light the different types of adoption that take place in Guatemala, national and international legislation, the problems that exist with the current system of adoption, and some of the irregularities that have been detected resulting from inadequate legal mechanisms covering adoptions. The report on the study concludes with a recommendation for the elaboration of a law that would regulate both judicial and notarial adoptions. The information provided by Guatemala also reported initiatives that had been taken in the areas of child prostitution, street children, education, justice, and drug addiction.

Forthcoming study of the role of the business sector

9. After completing her study on the role of the family on the protection of children, the Special Rapporteur has chosen to focus her attention on another sector of society that has traditionally been overlooked in most discussions about human rights: the private sector.

10. In recent years, there have been several high-profile events which have implicated certain corporations in serious human rights violations. They have generated much discussion as to the responsibilities of the private sector in this regard. Public awareness is now such that large-scale entities — notably oil companies —that have invested in countries with poor human rights records and that

have been more directly involved in human rights violations can no longer act with impunity.

11. In 1999, at the annual meeting of the World Economic Forum in Davos, Switzerland, the Secretary-General of the United Nations launched the Global Compact, a framework for enhanced cooperation between the international business community and the United Nations. More specifically, it is a partnership between the Office of the United Nations High Commissioner for Human Rights, the International Labour Organization and UNEP, together with key business organizations committed to implementing the nine Global Compact principles, taken from the Universal Declaration on Human Rights, the ILO's Declaration on Fundamental Principles and Rights at Work, and the Rio Declaration on Environment and Development, adopted at the 1992 United Nations Conference on Earth. Principles 1, 2 and 5, below, are of most relevance to the work of the Special Rapporteur:

(a) Principle 1: to support and respect the protection of international human rights within their sphere of influence;

(b) Principle 2: to make sure their own corporations are not complicit in human rights abuses;

(c) Principle 5: the effective abolition of child labour.

12. The Special Rapporteur has chosen to focus upon the business sector for several reasons. Throughout her term as mandate holder, many initiatives taken by both small firms and large corporations concerning children have been brought to her attention. However, she has also been made aware of lost opportunities and failed initiatives which might have had a substantial impact. In many such cases, the initiatives failed not from a lack of financial assistance but from a lack of interest, knowledge, or understanding on the part of those who might be in a position to provide assistance.

13. As mentioned above, in her past reports, she analysed the justice system, the media and education as catalysts for the protection of children and also as causatory agents for the sexual exploitation of children. It is not the intention of the Special Rapporteur to analyse the role of the business sector in the same way but rather to highlight some of the ways in which it is assuming and could assume both a proactive and reactive response to violations.

14. In June 2000, the Special Rapporteur wrote to Chambers of Commerce and non-governmental organizations around the world and informed them that she wished to learn more about the possibilities of engaging the private sector as advocates for the rights of the child. She provided the following examples of successful initiatives and requested information on others which could be proposed and replicated:

(a) Providing on-site day-care facilities, so that working mothers can have their children close at hand;

(b) Initiating local programmes to benefit children, for example, by providing lights around parks in which children can play safely in the evenings;

(c) Providing scholarships or apprenticeship programmes for out-of-school children;

(d) Raising awareness among business partners that being socially responsible is good for business;

(e) Taking steps to discourage activities that might involve the sexual exploitation of children when employees are sent on business trips;

(f) Ensuring that employed children (any individual under the age of 18) are not at risk of sexual exploitation by their supervisors.

15. The Special Rapporteur was delighted by the enthusiasm with which her proposal was greeted by the Secretary-General of the International Chamber of Commerce, and she thanks those Chambers of Commerce and non-governmental organizations that have already provided her with information.

16. Her analysis of the current situation and future possibilities and a summary of the responses received will be presented in her forthcoming report to the Commission on Human Rights at its fifty-seventh session.

B. Activities

17. Since the fifty-sixth session of the Commission on Human Rights, the Special Rapporteur has carried out one field mission. From 28 February to 3 March 2000, she visited Morocco (Casablanca, Rabat, Meknès, Tangier, Marrakech) at the invitation of the Government. The report of the mission will be submitted to the Commission on Human Rights at its fifty-seventh session.

Summary of the visit to Morocco

18. The Special Rapporteur visited Morocco in the context of her mandate and met with both governmental and non-governmental representatives. She also visited children's centres. She met, inter alia, with the Ministers for Human Rights, of Youth and Sports, of Education, of Tourism, of Foreign Affairs, of Education, and of Justice, and with the Secretariats of State for Social Protection, Family and Children and for Solidarity and Humanitarian Affairs. She also met with Le Conseil consultatif des droits de l'homme and with L'Observatoire national des droits de l'enfant.

19. The Special Rapporteur was very appreciative of the candid manner in which the representatives of the various ministries engaged in dialogue with her over the concerns of her mandate. Several non-governmental organizations confirmed that the Government had started to take measures to improve the protection of the rights of the child in Morocco.

20. In Casablanca, Rabat, Meknès, Tangier, and Marrakech, she carried out on-site evening visits to observe for herself the situation of street children, in particular their vulnerability to sexual exploitation. Her particular concerns were as follows:

(a) Many young girls are sent by their parents in rural areas to work as housemaids in the cities. Such girls are particularly vulnerable to exploitation, both sexually and through labour;

(b) The absence of a Minor's Court and a workable system of juvenile justice has resulted in child victims and child offenders being accorded much the same treatment. For example, in the one centre that exists for girls, the Special Rapporteur met with a 15-year-old former housemaid who had been found guilty of murder, and a seven-year-old whose parents had abandoned her. Both were housed together in a detention facility;

(c) Certain legislation increases the discrimination faced by women and girls. For example, allegations of rape must be supported by witness testimony, and paternity tests are not carried out on the accused. Furthermore, an unmarried pregnant woman who cannot prove that she was raped will be liable to charges of having had unlawful sex;

(d) The absence of effective legislation allowing for children to be brought up by relatives other than their blood relatives means that many babies born to unmarried mothers are abandoned at birth and subsequently grow up in orphanages and detention facilities.

Participation in other events

21. In April 2000, the Special Rapporteur participated in a meeting entitled "Consultation between the right to development and economic, social and cultural rights experts and United Nations agencies and organizations: perspectives for coordination and interaction". The purpose of the meeting, which was organized by UNCHR, was to highlight the need for coordinated interaction between the human rights mechanisms dealing with development and economic and social rights issues and the rest of the United Nations system, so as to ensure that human rights are mainstreamed throughout every aspect of the United Nations work — from peace and security to development, humanitarian issues, and economic and social affairs.

22. The consultation concluded that in many situations good coordination does already exist. The Special Rapporteur reported, for instance, how she had worked with UNESCO on the issue of child pornography on the Internet and how UNESCO had used her reports as base documents for their work. However, where such cooperation has taken place, it has mainly occurred on an ad hoc basis. The consultation concluded that substantial overlap exists in many cases between the mandates of various agencies and those of human rights experts and that arrangements for coordination are seriously underused and underdeveloped. If improved, the overlap could generate complementary and reinforcing programmes of work.

23. The Special Rapporteur's experience on various country visits in the past validates this perception. In some countries she experienced a total lack of awareness, even within United Nations agencies, of the existence of the post of Special Rapporteur. Needless to say, coordination and organization of the many meetings and activities held during some of her visits have left much to be desired. On the other hand, the success of several of the visits was enhanced in places where collaboration with the agencies and field offices was a reality.

24. Between 26 and 28 April 2000, the Special Rapporteur participated in a ministerial conference in

Tokyo, sponsored by the Japan Committee for UNICEF, during which she addressed some of the causes for entry into prostitution and pornography by children in developed countries.

Forthcoming country visits

25. The Special Rapporteur has been invited by the Government of the Russian Federation to visit that country in the context of her mandate. At the time of writing, it is envisioned that the mission will be carried out in October 2000.

26. The Special Rapporteur has approached the Government of Sri Lanka to request an invitation to visit that country. She is particularly concerned about the situation of boys who are drawn into prostitution, especially those who spend time on the beaches of Sri Lanka hoping to find work with the fishermen. She has also been concerned by reports of an increased level of domestic violence and sexual abuse of girls within their homes. The Special Rapporteur is extremely eager that a mission to Sri Lanka will take place before the session of the Commission on Human Rights in 2001.

III. International developments relating to the trafficking of children

Africa

27. In recent years the Special Rapporteur has been concerned by an increasing number of reports on the extent of trafficking of children for various purposes in West Africa.

28. In 1999, a UNICEF study on child trafficking in West and Central Africa found that trafficking of children takes place in many of the countries in the subregion. In particular, networks of traffickers take children from Togo, Benin and Nigeria further south by sea to Gabon, where they are put to work, mainly as domestics. Malian children are taken as cheap farm labour to Côte d'Ivoire, which also receives domestics and fishermen's apprentices from Ghana. Burkina Faso, Cameroon, Guinea and Niger are also mentioned in the study as experiencing similar problems.

29. The Special Rapporteur welcomes the attention that this phenomenon is now receiving in the subregion. In February 2000, a three-day subregional consultation on developing strategies on the trafficking of children for exploitative labour purposes in West and Central Africa took place in Libreville, Gabon. Organized by UNICEF and the ILO, it was attended by approximately 150 delegates from 20 West and Central African nations and international organizations.

30. The main objectives of the consultation were to adopt a common platform of action to guide programmes of action and coordinated interventions of the various partners at all levels and to deepen knowledge of the problem of the worst forms of child labour in the region, whereby children are exploited, ill-treated and deprived of their childhood.

Latin America

31. In Latin America, UNICEF has worked to bring greater media attention to the extensive problem of trafficking in children, particularly in Mexico, Guatemala and Paraguay, in the hope of leading to the creation of mechanisms to deter these activities and promote child welfare.

Asia

32. An apparently new form of trafficking of children, which was recently brought to the attention of the Special Rapporteur, leads to the involvement of children in circus performances. The information received concerned Nepal and India and alleged that many children, especially girls from Nepal, have gone to India for this purpose. In the Makawanpur district south of Kathmandu, Nepal, over 200 young girls aged between five and 15 years of age have recently been sent to a variety of Indian cities, including Delhi, Mumbai, and Calcutta.

33. It is alleged that agents, mainly Indians, go to the Nepalese villages in search of children and often convince the girls' families that their daughters will earn more money in India and enjoy a better life there. However, reports indicate that, in reality, most girls are paid only 50 rupees a day, and nothing at all if the agents have "bought" the girls with a lump-sum amount to the family.

34. According to a local non-governmental organization in Makawanpur, the children are forced to work hard and in sometimes inhumane conditions in the circus and, as they get older, are often sexually

exploited. The non-governmental organization also claims that the agents no longer target just illiterate rural girls from the poorest families but are starting to entice school girls from wealthier families, and it expressed concern that local police were proving very reluctant to get involved to stop the trade.

IV. Country-specific developments relating to the mandate

Bangladesh

35. In Bangladesh, domestic violence committed against women and children is being addressed through police officers. The Centre for Women and Children Studies introduced a pilot project in 1998 aimed at sensitizing the police and other members of the community on women's and children's rights as human rights, advocating "pro-women and child-friendly policing" at the community level.

36. The dimensions of violence against women and children in Bangladesh, which are reported to be "appalling", are allegedly inflated by repeated misuses of power and excesses committed by police, coupled with discriminatory attitudes and practices towards women and children.

37. The Centre for Women and Children Studies has organized several training programmes on women's and children's rights as well as interactive workshops. It has also organized awareness-raising workshops on women's and children's rights for officers from different police departments and stations throughout Bangladesh.

38. When faced with cases of abduction, dowry-related situations, trafficking and rape, the police have reportedly shown positive attitudes after attending the sensitization programmes. In some departments they have begun to share and exchange information about the sensitization programme with local members of the community, in order to make joint efforts to combat violence against women and children.

Cambodia

39. In July 2000, the Government of Cambodia suspended international adoptions, following reports in the Phnom Penh *Post* in May 2000 that an orphanage in the capital city had been buying babies from a local village to supply foreigners wanting to adopt Cambodian children. The newspaper reported having spoken to a woman who had been given $100 for her baby daughter and had been told by the orphanage that if she was lucky, the baby would be adopted by foreigners. The woman's husband had just died, and her hut had been destroyed by a storm. As a homeless widow with no money and two children to feed, she felt that she had no option but to give up her child for adoption. The orphanage told her that there was a chance that if her daughter was adopted abroad, her new parents would send money back to help the woman. But four days after the sale, the mother changed her mind, went back to the orphanage and bought her daughter back.

40. The newspaper also reported that a human rights organization investigating baby trafficking for international adoptions interviewed a former nanny at the same orphanage who confirmed the existence of agents who procured babies for the orphanage and received approximately US$ 60 for each child.

41. The Cambodian Ministry of Social Affairs, which is responsible for processing applications by foreigners to adopt Cambodian children, has reported that in 1999, the Government approved 381 adoptions by foreigners, of which 240 children went to parents in the United States.

42. The Special Rapporteur welcomes the fact that the Government of Cambodia is taking these allegations seriously and urges them to act quickly to investigate and put an end to any instances whereby children are the objects of sale. She also encourages the Government to carry out a thorough review of the current system of international adoption so as to eliminate any irregularities and to introduce measures to assist poor women or couples who would like to keep their children but feel unable to look after them due to financial constraints.

43. However, the Special Rapporteur recognizes that there are many children who genuinely need a loving home, either in Cambodia or elsewhere, and she encourages the Government of Cambodia to lift the suspension of international adoptions as soon as possible, so that this important avenue be made available to such children.

Costa Rica

44. The Special Rapporteur continues to express her grave concern over reports of the alleged extent of sexual exploitation of children in Costa Rica, particularly in the context of child sex tourism. The numbers of children involved appear to be rising, despite the introduction of recent legislation which carries a prison term of up to 10 years for anyone convicted of paying for sex with a minor. Costa Rican law allows women over the age of 18 to work as prostitutes.

Honduras

45. In January 2000, a court in San Pedro Sula, Honduras, sentenced three American men to jail terms of between four and nine years for promoting the prostitution of minors and profiting from the prostitution of others.

46. In April 1999 the Honduran Criminal Investigative Unit and staff from the non-governmental organization Casa Alianza had investigated a night club operating in San Pedro Sula. Hidden cameras documented the participation of underage girls as "exotic dancers" who were also offered to clients for sex. In private rooms, the girls danced naked for less than $5 per song, and above the night club was a hotel where the girls were reportedly taken to be sexually abused. A late night raid was carried out on the premises, at which time the American men were arrested and several firearms were found. Also detained in the raid were 17 of the "dancers", who included at least five minors aged from 14 years old. Several of them had become homeless in the devastation caused by Hurricane Mitch in 1998.

India

47. In India, a recent study carried out by the State Management Agency examined the situation of children in prostitution in three cities in Kerala, Ernakulam, Thiruventhupuram, and Kozhikode. The study identified 825 child prostitutes of which 355 were boys and 470 girls; 770 were 14-18 years old, and 55 were aged below 14. The children were drawn into the sex trade as early as 10-12 years of age.

48. The findings challenged the presumption of the traditional "causes" for entry into prostitution — namely, poverty, illiteracy, and lack of education, since a sizeable number of the children interviewed had finished school, came from comparatively wealthy families, and spent the money which they earned on cosmetics and clothes. Other children, it was suggested, "do it just to get even with over-strict parents".

49. For the larger percentage of the children interviewed, poverty, broken families, sexually abusive relatives, co-workers or bosses, and the resultant emotional trauma were found to be the chief factors driving them into the sex trade.

50. A small number of the children reported that they looked for clients quite openly, on streets or beaches, but others were more clandestine, such as the girls who met clients in their homes or in pre-arranged safe houses, away from the sight of the authorities. Some children reported that they had accompanied clients on extended journeys, and their experiences of these trips varied from being given gifts and money to being gang-raped and short-changed. In Kozhikode, young boys reported that they were in demand from women as well as men.

51. Many of the children did not believe that their behaviour put them at any risk. Most of the boys believed that homosexual sex did not lead to sexually transmitted diseases (STDs) and that condoms were only used to prevent pregnancy. The children had other misconceptions, such as that sex with the rich was safe; and 98 per cent of those interviewed said that they did not practice safe sex. The survey revealed that 52 per cent of the children had STDs.

52. The survey recommended an action plan to rescue children in prostitution, including protection and prevention, and strengthening family relationships and economic conditions, both within the family and throughout society.

Mexico

53. In Mexico, a Canadian journalist who was following a story about five Mexican children who were "adopted" by a Canadian couple involved in child pornography successfully arranged to buy a two-year-old girl in Guadalajara. The journalist had intended to demonstrate how difficult it was to purchase a child but

found that it was, in fact, relatively easy. The journalist posed as the representative of a Canadian couple who wanted to adopt a Mexican child. He placed advertisements in local newspapers and handed out pamphlets in hospitals. Five days later, he received an offer by telephone from a mother who wanted to sell her daughter so that her adoptive parents could give the girl everything that the mother could not. The mother, believing her daughter was being adopted, agreed to sell her for 100,000 pesos (approximately $10,500).

54. After meeting the girl and her mother in a Guadalajara shopping mall, the journalist made a 5,000-peso down payment and signed an agreement with the mother for another 95,000 pesos to be paid on delivery. He then returned to Vancouver and informed Mexican and Canadian authorities of his investigation.

Nicaragua

55. In Nicaragua, a recent UNICEF study reported that there has been significant growth in the number of children between the ages of 12 and 16 involved in prostitution. A relevant factor has been the increasing level of drug abuse. In a recent study of 300 street children by the Family Ministry, more than 80 per cent said they had started working as prostitutes over the past year, most did so to buy drugs. About a third said they needed the money to buy crack. In most towns, taxi drivers are reported to serve as middlemen, and many of the children prostitute themselves with foreigners.

United States of America

56. In the United States, earlier in 2000, a lawyer who took part in an adoption scheme involving the recruitment of pregnant Hungarian women in order to sell their babies to Californian couples, was reportedly sentenced to 15 years in jail. The lawyer persuaded the birth mothers to travel to the United States and provided them with fraudulent visas. When it was not possible to provide them with a visa, she allegedly helped arrange for birth mothers and children to be smuggled into the United States via Canada.

Viet Nam

57. The sale and trafficking of babies for adoption is reported to be developing into a lucrative business in Viet Nam, following a sharp rise in international adoptions from the country in recent years. According to a report from the International Organization for Migration, released in January 2000, children are being sold for up to $5,000. The report declared that, to keep up with the demand, Vietnamese women were reportedly rushing to produce babies to sell. In the past adopted children were mostly abandoned children or those from very poor families. The report also noted that authorities in both the northern and southern parts of Viet Nam recently uncovered child-for-sale syndicates, which have procured hundreds of babies from poor families for illegal adoption since 1996.

58. In January 2000, nine people involved in a ring that trafficked 199 babies abroad between 1995 and 1997 were sentenced to prison terms of up to 20 years by a court in the southern province of An Giang. The defendants include a provincial justice department official and the director of an orphan care centre. Unmarried mothers and parents from poor rural families had been told by doctors and nurses that their children would be looked after by the health officials' relatives. According to local media reports, the children were then brought to the orphanage to be sold to foreigners.

59. In July 2000, authorities in the northern province of Bac Can uncovered a child-trafficking operation alleged to have sold 77 children to foreigners during the previous 18 months. In the same month, authorities in the northern province of Ninh Binh filed charges against more than 12 people, including health and justice department officials, for alleged involvement in the sale of approximately 350 children to foreigners over a three-year period.

60. Of the thousands of Vietnamese babies who are adopted abroad every year, most go to parents in the United States and France. The legal process takes approximately three months, and at least one parent has to travel to Viet Nam for a stay ranging from one to four weeks. It is alleged that some of these parents knowingly or unknowingly engage unauthorized agents linked to corrupt officials who charge large sums to ensure that their applications will be quickly processed.

61. In April 1999, the Government of France temporarily suspended adoptions of Vietnamese children, pending the introduction of rigid checks on the adoption procedures. The Government of the United States has issued an advisory which warns prospective parents that some Vietnamese families may be tempted to release their children inappropriately for adoption "either out of greed or with the intent of securing them a better economic future".

Zambia

62. A case of child trafficking was uncovered in Lusaka, Zambia, in December 1999, leading to the arrest of an Australian man. He had attempted to smuggle five young girls, mostly minors, apparently with the intention of taking them to his country under the pretext of dancing careers. A local non-governmental organization learned about the incident, because one of the girls involved had been enrolled on its rehabilitation programme.

V. Special focus on domestic violence

63. When the Special Rapporteur was appointed in 1995, she began her study with a review of the diverse causes giving rise to the sale of children, child prostitution and child pornography (see A/50/456). Among the causes, several related to the family in particular, erosion of family structure, both nuclear and extended, resulting in the loss of one of the best stabilizing elements in the lives of children. She then considered which catalysts, or agents of change, could be utilized in instituting reforms benefiting children. She determined that those catalysts were the justice system (E/CN.4/1997/95) and the media and education (E/CN.4/1998/101). As she continued her study, she noted that the role of the family pervaded every aspect of her analysis and caused her to revisit almost every conclusion. For example, how can one recommend measures to keep the child from having to face the perpetrator of his abuse in the courtroom, when that person is his own father? To what extent should sex education for children also be offered to their parents? Would the best method of protecting children from harmful or obscene material on the Internet simply be the presence of a parent while the child uses the computer?

64. The Convention on the Rights of the Child, in its preambular paragraphs, describes the family "as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children [which] should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community".[1]

65. The Special Rapporteur very strongly concurs with this assessment of the role of the family and believes that the child who is able to grow and develop within a loving and functional family unit is given the best possible start in life and will be well equipped to deal with adult life. However, she has particular concerns about the children for whom a loving and functional family has not been a reality.

A. Legal framework

66. Article 19 of the Convention on the Rights of the Child accords the child the right to be protected from domestic violence, thus:

> "1. States parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child."

It might be argued in order for an action to qualify as "violence", some form of aggressive physical contact is necessary. However, the Special Rapporteur uses all the elements of article 19(1) for her working definition of domestic violence.[2]

67. Article 19 of the Convention continues:

> "2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child, and for those who have care of the child as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement."

68. Article 19 seeks to accord children the broadest possible range of protection against any kind of domestic or other violence. It deals specifically with the duty of Governments to protect children against neglect and abuse by parents or other persons who care for them. This duty takes on added significance because its violation often deprives the child of access to help, and the mistreatment or abuse may then continue undetected for long periods of time.

69. Through the article, the Special Rapporteur suggests that the Convention on the Rights of the Child extends the following protection to children:

(a) Against physical violence, which is the actual or attempted use of any physical force with the intent to injure, control, hurt or make the victim afraid of the abuser. This would include slapping, punching, kicking etc;

(b) Against mental violence which includes psychological, emotional and verbal abuse intended to undermine the victim's self-esteem and self-confidence. This is usually expressed through words and actions aimed at instilling fear and submission;

(c) Against neglect which entails acts of omission rather than acts of commission. Failure to see to the basic needs of a child, like food, clothing and medicine, would be considered neglect. However, such failure might not be considered an act of violence, as envisaged by the Special Rapporteur;

(d) Against maltreatment which refers to acts that may not be characterized by physical contact between abuser and victim but that are just as harmful, such as making a child do something extremely difficult or painful for someone of his/her age and/or physical condition;

(e) Against exploitation, including sexual abuse which includes all kinds of sex, even just touching in a sexual way, and even if there is no violence. Watching pornography together with children, watching children do something sexual with each other, taking photos of their bodies or just looking at their bodies in a sexual way are also forms of sexual abuse or exploitation.

Summary of concerns

70. In her recent report to the Commission on Human Rights (E/CN.4/2000/73), the Special Rapporteur considered some of the many issues that had been raised in the governmental and non-governmental responses to her questionnaire. In particular, she analysed the nature of the abuse that child victims of domestic violence are exposed to. She concluded that, although physical and sexual violence were most often cited, the impact of emotional neglect and cruelty upon the lives of children needed to be given much greater attention by the international community.

71. The responses described a range of violent offences to which children in virtually all parts of the world had been subject within the home environment, from battering to torture, mutilation and murder. Sexual violence was usually considered in terms of incest, for which the Special Rapporteur adopts a definition that takes into consideration the betrayal of trust and the power imbalance in one-sided relationships.

72. The Special Rapporteur then provided a profile of the perpetrators of domestic violence, since she was interested in examining the widely held belief that the vast majority of violence and sexual abuse in the home is committed by fathers and step-fathers. She was also keen to look beyond the traditional definition of domestic violence as "family violence", in order to include the substantial incidences of abuse committed within a "home" by unrelated individuals.

73. She received information about abuse committed by men against their wives/girlfriends and their children, by women against their husbands/boyfriends and their children, by grandparents, step-fathers, step-mothers, brothers, brothers-in-law, employers (and their sons) of domestic servants, by other members of the extended family, by neighbours, babysitters, school teachers, priests/ministers, and by scout masters. Information was also received about violent acts committed by children against other family members.

74. She then considered the effects of domestic violence upon children, including the effect of witnessing violence within the family. She concluded that, although most of the information that she had received indicated a lack of formal study as regards the link between domestic violence and subsequent commercial sexual exploitation, virtually all of the responses indicated an undeniable link between the two and alluded to many other repercussions.

B. Responses to questions on domestic violence

Chile

75. In 1995, the Ministry of Justice, in conjunction with the police, the regional governments and the Telecommunications Company of Chile, introduced a telephone service to inform the public about Law 19.325, on intra-familial violence, and Law 19.324, on child abuse.

76. The service, which initially operated just within the metropolitan area, has now developed into a 24-hour telephone hotline, available in almost all regions of the country. It receives calls reporting situations of family violence and child abuse. It has provided statistics which have been used by the Government of Chile to assess the nature and extent of violence against children throughout the country.

77. In the reported 1,109 cases of sexual abuse of children in 1995 and 1,484 in 1998, the majority of offences were committed by someone known to the child. For example, in 1998, in 555 total cases, the father was implicated in 196, and neighbours were reportedly responsible in 121.

78. These statistics were compared with a study carried out by UNICEF in 1994, which focused on the incidence of physical maltreatment of children. In the majority of the cases, the mother was found to be primarily responsible for physical mistreatment of her child, but this was attributed to the fact that she spent the majority of her time with the child. In situations where the father was the aggressor, the maltreatment was usually much more severe.

79. The Servicio Nacional de Menores (SENAME), created by the Ministry of Justice, is a network of organizations which carries out activities necessary to assist and protect children and young persons, and which coordinates and supervises public and private organizations that deal with the problem of child abuse.

Denmark

80. In Denmark, a report on prostitution was published in 1990 by the Danish National Institute of Social Research. The link between child abuse and neglect in the home and subsequent entry into prostitution was not specifically studied, but it was reported that prostitutes have often been subject to violence in the family. Male prostitutes generally reported having had absent or violent fathers.

81. In July 1998, the National Council for Children (NCC) was established on a permanent basis, to further promote work on the rights of the child. It does not process individual complaints and thus is not involved in specific cases of domestic violence. However, it is obliged to monitor social development, public debate and issues of importance to children and may take initiatives and make proposals to the Danish Parliament in matters of importance to children.

82. A victimology study on domestic violence and neglect was carried out by the National Commissioner of Police in 1995 and 1996. It was based on interviews with approximately 26,000 persons aged between 16 and 74, of whom six were identified as victims of violence (including threats of violence). Twenty-nine per cent of the female victims and 9 per cent of the male victims were subject to violence in the home.

83. Anyone who suspects that a crime of domestic violence has been committed can bring the matter to the attention of the police, and the police themselves can also act on their own initiative. A supporting counsel may be appointed, upon request, for victims of violence or crimes of a sexual nature.

84. The Government of Denmark has reported that several incidents of extra- and intra-familial sexual abuse of children had been disclosed in recent years, creating massive media attention. The incidents had highlighted both judicial and legislative lapses and the absence of documentation or knowledge about the scope of the phenomenon by local authorities. In 1999, the Interministerial Committee on Children began research for a new study on the subject which would include proposals for new initiatives.

Fiji

85. The Fiji Law Reform Commission admitted that there was a dearth of documented research regarding domestic violence involving children. Police statistics and anecdotal evidence suggested that the majority of domestic violence cases occurred largely in spousal relationships. When the Special Rapporteur visited Fiji in October 1999 (E/CN.4/2000/73/Add.3), she was encouraged by the efforts that the Government had made to make the subject of domestic violence a national priority, especially through the work of the Fiji Women's Crisis Centre and through a campaign of

national public awareness. The Special Rapporteur recommended to the Government that the rigorous efforts made to address the problem of domestic violence against women be directed towards resolving the problem of domestic violence against children.

France

86. The Government of France reported that, according to a 1997 study carried out in 82 departments by the National Observatory for Childhood in Danger, 21,000 minors were found to be ill-treated. The types of ill-treatment were broken down as follows: 7,000 victims of physical violence, 6,800 victims of sexual abuse, 5,400 victims of grave negligence, and 1,800 victims of psychological violence.

87. Under the French legal system, if a prosecutor receives information from the social agencies, the medical services, or a witness that a child is involved in a situation of domestic violence, the prosecutor can give instructions to the police to carry out an investigation. In other cases involving children, it is only the child's parent or guardian who can bring a complaint on his or her behalf.

88. National initiatives to combat domestic violence in France include the establishment of a telephone hotline and a local observation system for maltreated children, which also seeks to find local strategies to combat the problem.

89. The Government of France informed the Special Rapporteur of the decision of the European Parliament and the European Union to adopt a common action programme, entitled DAPHNE/2000-2003, which aims to establish preventive measures against violence against children and women, including sexual violence in the form of sexual exploitation and sexual abuse, and to provide assistance to victims of violence.

Guatemala

90. The Government of Guatemala reported that violence is a phenomenon which occurs in the public as much as in the private domain, and one of its manifestations is child abuse. Several governmental and non-governmental studies on domestic violence involving children and children in prostitution have been carried out over the past 10 years.

91. The non-governmental organization called PAMI (Programa de Apoyo para la Salud Materno Infantil y para la Salud de Otros Grupos de Riesgo) carried out a study linking domestic violence against children and the commercial sexual exploitation of children. It revealed several cases of abuse committed by the very institutions mandated to protect children and youth who were victims of ill-treatment.

92. The 1999 United Nations report "Guatemala: the rural face of human development" indicated that in Guatemala, the social and cultural environment in which adults live has created a tendency for some of them to use violence against their children. In the annual report of the Procurator for Human Rights in 1998, out of 845 cases of child abuse presented to the governmental departments, 95 per cent were cases of acute physical abuse, and 10 per cent were cases of sexual abuse. Other records suggest that up to seven out of 10 children suffer from some type of abuse, but generally these cases are not reported.

93. In the absence of any governing institution dealing with the causes and consequences of the problem, the National Commission against Child Abuse was established in 1994, to coordinate with governmental and non-governmental bodies regarding action to be taken for the prevention of child abuse and for its treatment. It is made up of, inter alia, several ministries, the Procurator General, non-governmental organizations, paediatric hospitals, and the Archbishop of Guatemala.

94. Among its objectives are to reduce in the number of cases of child abuse over a period of five years, by creating greater stability within families, and to coordinate and execute activities directed to further implement Guatemala's obligations under article 19 of the Convention on the Rights of the Child.

Mexico

95. The Government of Mexico reported that there are many official institutions and non-governmental organizations dedicated to the study and resolution of the problem of domestic violence.

96. In March 1999, a national programme against domestic violence was launched for a period of two years. It analysed how laws should be updated to ensure effective punishment for the harm caused by either physical or psychological abuse of the elderly, women, children and those with disabilities. The programme aims for the creation of a culture of respect and peaceful coexistence between family members,

through national and societal efforts to eliminate violence in the home.

97. The National System for the Integral Development of the Family (DIF), since its creation in 1977, has promulgated laws and programmes to reduce instances of maltreatment of children within the family, and since 1997 it has introduced in educational programmes themes such as "prevention of sexual abuse of minors" and "domestic violence". DIF receives information on individual cases. In the 25,259 reported cases of child abuse — physical, psychological, verbal or sexual — which occurred throughout Mexico and were brought to its attention in 1997, the mother was the aggressor in 10,317 cases, and the father the aggressor in 5,618 cases. The step-father was responsible in 1,659 situations, and the step-mother in 1,359 cases. The aggressors in other cases were family members such as uncles and grandparents.

98. Any person who has knowledge of instances of domestic violence is obliged to report the offences to the offices of DIF, to the agencies of the Public Ministry or to the police.

Norway

99. In Norway, the Ministry of Children and Family Affairs is in charge of national policies regarding child welfare and child protection, but it does not deal with individual cases. The Government reported that national statistics do not give accurate and detailed information about the incidence or prevalence of domestic violence or child neglect, and crime statistics concerning violence do not include specific information about perpetrators, victims or whether violent acts took place in public or private places. Child welfare statistics giving information about the registered causes for intervention concerning children use categories such as neglect and physical abuse, and some children who witness domestic violence can be categorized as having been mentally abused.

100. The legal structure for dealing with child abuse and neglect is provided through the Norwegian Child Welfare Act, which imposes no formal limits as regards who may report a case of assumed child neglect or abuse to the municipal child welfare services. Statistics of such cases reported in 1997 indicate that out of 15,761 cases, 4,059 were reported by a parent, over 2,500 were reported by welfare or social services, over 2,600 by the child's school or by the police, and 381 cases were reported by the child himself or herself. In the vast majority of reported cases, the child stays with the parent(s) while the case is investigated by the child welfare service, unless there are causes for grave concern about the child's well-being or health, in which case interim care orders may be issued. Generally, all reports of domestic violence will be investigated by the child welfare services, unless the perpetrator of the violence has moved out of the home.

Singapore

101. In Singapore the Children and Young Persons Act provides for the protection of and rights to protection of children and young persons under the age of 16. The Women's Charter provides for the protection of women and girls of 16-21 years against moral danger and exploitation, and spells out the responsibilities of parents in relation to the care of their unmarried or widowed children. In the administration of the legislation, the primary objective is to prevent and protect children from abuse, ill-treatment, neglect, abandonment, sexual exploitation, taking part in public entertaining, and illegal activities such as illegal hawking, gambling or begging. While the problem of child abuse is not a major one in Singapore, it is of concern.

102. The Ministry of Community Development is the lead agency for child protection and welfare. It works in close collaboration with other ministries, the police and non-governmental organizations in the protection of children and young persons. A multidisciplinary and multi-agency team known as the Child Abuse Protection Team was set up in 1996, comprising social workers, psychologists, doctors and psychiatrists. To ensure more effective management of child abuse cases through closer cooperation and coordination among the relevant agencies and professions, a manual has been developed, and the Special Rapporteur expresses her appreciation to the Government of Singapore for providing her with several copies.

103. The following issues are considered to constitute child abuse in Singapore: physical abuse, including non-accidental injuries which may be single or repeated injuries; physical neglect, which includes failure to provide adequate food, shelter, medical care or supervision; sexual abuse, described as any non-consensual sexual act or behaviour or unwanted sexual touch or exposing a child to forms of sexual acts or pornographic activities; and emotional/psychological

abuse, which includes actions that hurt and damage the child's self-esteem such as ignoring, discriminating, threatening, terrorizing or blatantly rejecting the child, or continuous criticism which causes fear and confusion in the child.

104. Penalties of up to four years imprisonment can be imposed on any person above the age of 18 who has custody, charge or care of any child and who wilfully assaults, ill-treats, neglects, or abandons the child or who exposes him or her to such treatment. If such treatment results in the death of the child, the perpetrator may face a prison term of up to seven years.

Tunisia

105. After ratifying the Convention on the Rights of the Child in 1991, Tunisia promulgated the Code for the Protection of the Child (CPE), and modified and finalized certain articles of its Penal Code in order to conform to the new legislation. Article 28 of the CPE provided for the creation in 1996 of a body, Delegates for the Protection of the Child (DPE), attached to the Ministry of Youth, Childhood and Sports, to oversee the protection of children from violence and abuse and to work for the security and development of children. The DPE has a preventative mission with organizations in eight departments in Tunisia.

106. In its first two years of activity, 1997-1998, the DPE estimated that out of 1,416 cases involving the abuse of children, 646 were confirmed cases of maltreatment, neglect or failure to provide the child with education or protection. The protections not provided included protection of a child's health and physical or moral integrity, protection of a child left without support after the loss of his parents, protection from exposure to negligence, vagabondage, habitual ill-treatment, exploitation through organized crime, begging or other economic exploitation.

107. Under the Penal Code, a variety of imprisonment penalties are imposed on those found guilty of sexual offences with minors. The consent of a girl child is irrelevant if she is under the age of 13. Sexual intercourse with a girl under the age of 15 is punishable by imprisonment of six years — five years if the victim is aged between 15 and 20. When a girl child is raped under armed threat, the death penalty may be imposed.

Turkey

108. The Turkish Social Services and Child Protection Agency reported that there has been an increase in the number of cases of children who have run away from their homes and become vulnerable to exploitation through prostitution, begging and crime. Rapid and irregular urbanization, unemployment and poverty were cited as having led to a reduction in the extent to which children could avail themselves of educational opportunities. It was reported that handicapped children and those with mental disabilities or with difficulties in hearing or talking were more vulnerable to sexual harassment.

109. There are several legislative provisions pertaining to the protection of children in the Turkish Civil Code, Law No. 2828. The Penal Code regulates the offences of rape and sexual abuse. It introduces a variety of sentences which depend on the age of the victim. If the victim is under 15 years, the penalty is the same regardless of any consent on the part of the minor, but if the minor is aged between 15 and 18 and has consented to the sexual intercourse, the penalty is less severe.

110. Relevant statistics were provided which had been generated by a project on "child mothers", developed by the Social Services and Child Protection Agency with the aim of finding solutions to the problems of such mothers, their babies, and their families. The project was initially implemented in 10 provinces from March 1995 to January 1997. It received information on 15 cases of sexual abuse, 13 of which resulted in pregnancy. In seven of the cases, the father was reported to have been the abuser; one case involved the step-father; five cases involved a boyfriend, fiance or unlawful husband (where the marriage had not yet been formally realized under civil law), and two cases involved rape by an unknown man.

United Kingdom

111. The United Kingdom reported that a forthcoming study (due end of 1999) by the Home Office Policing and Reducing Crime Unit (PRC) examines the link between domestic violence and child abuse, incorporating all abuse, not just commercial sexual exploitation, for which children might become known to police child protection units. However, the focus within the PRC is on rape and domestic violence rather than neglect.

112. In 1998, the British Crime Survey (Home Office 1998) classified 25 per cent of the incidents reported as being domestic in nature. An earlier survey (1996) found that 4.2 per cent of women and 4.2 per cent of men said they had been physically assaulted by a current or former partner in the previous year.

113. The legislative basis for the protection of children in the United Kingdom is covered by the Children Act 1989, which imposes a range of responsibilities on local authorities for the care and protection of children. These include promoting the welfare of children who are in need and, so far as is consistent with that duty, promoting their upbringing within their family. A child is defined as being in need if he or she is unlikely to achieve or maintain or to have the opportunity of achieving or maintaining a reasonable standard of health or development without the provision for him or her of services by a local authority (Sect. 17(10)(a)) or if his or her health or development is likely to be significantly impaired or further impaired without the provision of such services, or if he or she is disabled. The local authorities are required to make enquiries where they have reasonable cause to suspect that a child is suffering, or is likely to suffer, significant harm, and a court may make a care order or an emergency protection order based on the findings of such enquiries.

114. In August 1999, the Home Office published a draft new guidance entitled "Working together to safeguard children", which takes into account new research, experience and legislation concerning child abuse. The guidance recognizes that both direct and indirect harm may be done to a child who lives in a household with domestic violence and that such children should be regarded as children in need. The guidance emphasizes the importance of agencies working together to help families and children under stress to help prevent abuse and neglect. It suggests that when police respond to incidents of domestic violence, they should first determine whether there are any children in the household and, if so, should notify the social services department to consider carrying out an assessment of the child and the family.

115. In some localities, domestic violence forums have been set up to raise awareness of the issue, to promote coordination between agencies in preventing and responding to violence, and to encourage the development of services for victims of domestic violence.

United States

116. Information provided by the Government of the United States covered abuse, neglect and domestic violence, in particular, in relation to date violence and teenage prostitution. Several studies into the causes of teenage prostitution noted that the majority of teenage runaways cited family problems as their reasons for running away and that early childhood sexual abuse and incest were common antecedent factors for teenage prostitutes. One study recorded that up to 65 per cent of the women in prostitution had been victims of child abuse. It concluded that early sexual experience may have conditioned those children to view sex as a means to communicate with and receive love from adults. The token gifts that are given to an abused child by the perpetrator may mimic the transaction of sex for money, and such victims may believe that when they enter prostitution, they will gain control of their sexual experience and their decision-making vis-à-vis the client.

117. Nonetheless, the same study concluded that not all children in prostitution have suffered intra-familial sexual victimization. Other causatory factors for children entering into prostitution include broken homes, foster homes and absent parents, with inconsistent economic and emotional parental support. Truancy, poor academic performance, quitting school, running away and drug abuse are commonly shared behavioural characteristics.[3]

World Health Organization

118. The World Health Organization (WHO) is currently reconsidering its work in human rights and defining a rights-based approach to health issues. Thus, more and more departments are complementing their traditional public health approach with a rights approach. WHO provided the Special Rapporteur with a report on its initiatives in the area of violence prevention and response and with statistics as to the global extent of domestic violence.

119. WHO reported that a compilation of surveys from 19 countries indicates that sexual abuse exists much more than is suggested by official reports alone: sexual abuse histories were revealed by at least 7 per cent of the women and 8 per cent of the men, ranging up to 36 per cent of women (Austria) and 29 per cent of men (South Africa). Approximately 40 million children

under 14 years of age around the world suffer from abuse and neglect and require health and social care.[4]

120. WHO reported that the relationship between abuse and prostitution is an indirect one but one that certainly does exist. Trauma may weaken a youth's bond with his or her family and increase perceptions of helplessness and powerlessness to change the abusive environment. This, in turn, can make the youth increasingly vulnerable to repeated sexual victimization and may lead to the perception that commercial exchange of sex is one of the only ways to obtain affection and economic security. WHO's strategies to address this problem include a recognition that the promotion of social support and self-esteem can reduce the severity of distress from abuse and thus indirectly also prevent the adoption of risky sexual behaviour.

121. WHO is currently preparing a world report on violence and health, to be released in January 2001. It is intended to raise worldwide awareness to the public health aspects of violence, to describe the extent and impact of violence cross-nationally, and examine cross-national patterns of violence. WHO has taken an initiative on child abuse prevention. At a consultation in March 1999, 27 experts from every region discussed child abuse prevention in the framework of an integrated public health approach. Recommendations were made in the areas of data collection, advocacy, policy-making, best practices and training.

Notes

[1] General Assembly resolution 44/25, annex.

[2] Article 2 of the Declaration on the Elimination of Violence against Women defines "violence" as encompassing but not limited to "physical, sexual and psychological violence in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation, and other traditional practices harmful to women, non-spousal violence and violence related to exploitation" (General Assembly resolution 48/104, annex).

[3] Seng, M. J., "Child sexual abuse and adolescent prostitution: a comparative analysis", *Adolescence*, vol. 24, No. 25 (1989), pp. 665-675.

[4] WHO, *Report of the Consultation on Child Abuse Prevention*. Violence and Injury Prevention Team, Geneva, 29-31 March 1999.

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Convention on jurisdictional immunities of States and their property

Convention on jurisdictional immunities of States and their property

Report of the Secretary-General**

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* A/55/150.
** The present report contains the text of replies received as at 15 August 2000.

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I. Introduction

1. In paragraphs 1 and 2 of its resolution 54/101 of 9 December 1999, entitled "Convention on jurisdictional immunities of States and their property", the General Assembly took note of the report of the Working Group of the International Law Commission on jurisdictional immunities of States and their property, annexed to the report of the Commission on the work of its fifty-first session;[1] urged States, if they had not yet done so, to submit their comments to the Secretary-General in accordance with General Assembly resolution 49/61 of 9 December 1994, and also invited States to submit in writing to the Secretary-General, by 1 August 2000, their comments on the report of the Working Group.

2. In paragraph 2 of its resolution 49/61, the General Assembly had invited States to submit to the Secretary-General their comments on the conclusions of the chairman of the informal consultations held pursuant to Assembly decision 48/413 of 9 December 1993, and on the reports of the Working Group established under Assembly resolution 46/55 of 9 December 1991 and decision 47/414 of 25 November 1992.

3. By a note dated 26 January 2000, the Secretary-General invited States to submit comments in accordance with paragraph 2 of resolution 54/101.

4. The present report contains the replies received as at 15 August 2000. Any replies received subsequently will be reproduced as an addendum to the present report.

5. The present report supplements the replies received from States pursuant to paragraph 2 of General Assembly resolution 49/61 (see A/52/294). The report also supplements replies received from States pursuant to paragraph 2 of resolution 52/151 of 15 December 1997, in which the Assembly also urged States, if they had not yet done so, to submit their comments in accordance with General Assembly resolution 49/61 (see A/53/274 and Add.1 and A/54/266).

II. Replies received from States

Chile

[Original: Spanish]
[8 May 2000]

Introduction

1. Chile shares the view that the work accomplished by the International Law Commission on the topic of jurisdictional immunities of States and their property is of great importance and that its success will contribute to the security of international relations and therefore to international peace.

2. In particular, Chile is of the view that the topic under consideration is one where the interests linked to the very nature of States must be reconciled sufficiently with those of individuals, so that, while respect is ensured for the sovereignty of the former, timely justice is guaranteed to the latter.

3. The sovereignty of States implies not only that they cannot be brought before courts of other States, but also that their respective laws are enforced in their territories and that, accordingly, the cases in which their own courts cannot exercise jurisdiction should be truly exceptional.

4. Moreover, the obligation to dispense justice implies the guarantee that the sovereignty of foreign States will not be used to leave individuals in a defenceless state.

5. Chile is therefore of the view that the text under consideration achieves a satisfactory balance between the two objectives referred to above, although at times it would appear to depart from the concern with not infringing the principle of sovereignty and, in particular, that of State immunity from jurisdiction.

General comments

6. In that connection, the text would appear to be aimed at reflecting a reality, namely, that the conduct of States does not always take place under the shelter of *jure imperii*, but rather, with increasing frequency, according to *jure gestionis* — a reality which, however, has not yet been transformed into a general norm.

7. That would perhaps explain why most of the draft articles refer to proceedings in which State immunity

cannot be invoked, in circumstances which might perhaps call for further development of the provisions relating to the general principle governing immunity. From that standpoint, it would probably be more accurate to state at the outset: "A State enjoys immunity, in respect of itself and its property, from the jurisdiction of the courts of another State, except in the cases and under the conditions provided for in the present articles." That would be a forceful reaffirmation of the general principle without prejudice to the exceptions specifically mentioned in the text.

8. In a similar vein, it would appear to be more logical to indicate, again as a general principle and a continuation of the previous statement, that: "The immunity from jurisdiction of a State shall be considered to have been infringed if a proceeding is instituted against it before a court of another State or if, in another proceeding, measures of constraint are decreed against it or taken against its property, and for as long as such a proceeding or such measures continue." In this way it would be clearer that where a right exists, so does an obligation which, if violated, entails international responsibility.

9. Accordingly, rather than referring to "modalities for giving effect to State immunity", the draft articles should refer to "the obligation of the State before whose courts a proceeding of any nature has been instituted against another State or in which, in another proceeding, measures of constraint have been decreed against that State or taken against its property, to respect the immunity from jurisdiction of that State in the respective proceeding".

10. In other words, the obligation of the State should be not only to "ensure that its courts determine on their own initiative that the immunity of that other State is respected", but to ensure that such immunity is actually respected, irrespective of whether or not it is determined by the courts. The latter is an internal matter or one under the exclusive jurisdiction of the State concerned. On the other hand, the obligation to respect immunity from jurisdiction is international and is within the scope of diplomatic relations.

11. Nevertheless, for the purposes of guaranteeing justice, it should also be stated that: "Once the immunity from jurisdiction of a State has been recognized, it has an obligation to settle, together with the State that has recognized it, the dispute that gave rise to the proceeding in question by one of the peaceful methods of dispute settlement in force between them." Thus, immunity from jurisdiction could not be used for the purposes of impunity or evasion of justice.

12. Moreover, it would be useful if, at the same time, it was stated that "immunity from jurisdiction does not relieve a State of the obligation to respect the laws of the State in which it operates". It would thus be crystal clear that, on the one hand, immunity from jurisdiction, as an expression of the sovereignty of any State, should not affect the sovereignty of other States and, on the other hand, that the failure to respect such laws may give rise to a separate international dispute between the States concerned and that, accordingly, it should be settled by one of the peaceful means of dispute settlement provided for in international law.

13. It would also appear to be absolutely necessary to provide, also as a general principle and with greater precision, that "immunity from jurisdiction is a right of the State which it alone can expressly waive". A statement of this type would make it possible to determine further, or more rapidly, what forms such a waiver might take.

14. In the light of the foregoing, Chile believes that the general structure of the draft articles should be as follows: Part I, Introduction; Part II, General principles; Part III, Waiver of immunity from jurisdiction; Part IV, Exceptions to immunity from jurisdiction; and Part V, Miscellaneous provisions.

Part I — Introduction

15. With regard to the use of terms, Chile believes that it would be necessary to provide a concept of immunity from jurisdiction, so that, on the one hand, the scope of the articles is properly understood and, on the other hand, not only is the concept derived from the other articles, but also the latter from the former.

16. Accordingly, article 1 could indicate that: "The present articles apply to the right of a State, together with its property, not to be subject, either directly or indirectly, to the jurisdiction of the courts of another State, which is termed immunity." Or perhaps a subparagraph could be added to article 2, stating that: "'Immunity' means the right of a State, together with its property, not to be subject, either directly or indirectly, to the jurisdiction of the courts of another State."

17. This would already emphasize that what is involved is a right (which can therefore be waived), consisting of the fact that, in general, the courts of another State are not entitled to hear, resolve and enforce judgements in cases involving a State.

18. With regard to the use of terms, it would appear to be necessary, on the one hand, to harmonize the term "court", which is used in the present draft articles, with the concepts used in the draft articles on State responsibility and, on the other hand, to clarify what is meant by "judicial functions".

19. In this connection, it could be stated that "'Court' means any organ of a State, however named and situated, entitled, under the domestic law of that State, and provided that it is acting in that capacity, to exercise judicial functions (or to hear, resolve and enforce judgements in civil, criminal and administrative cases)". Thus, judicial functions would include all the courts of a State, including arbitral, administrative and electoral tribunals.

20. With regard to the term "State", Chile believes that it could be illuminating to go through the exercise of providing an idea of what the term would not be considered to include. Accordingly, Chile supports the idea of adding the following sentence: "For the purposes of the present articles, the term 'State' shall not be considered to include organs, entities and enterprises established with a separate legal personality so that their own assets may be liable and they may act not in the exercise of its governmental authority."

21. With specific reference to the constituent units of a federal State and the political subdivisions of a State, Chile is of the view that it is not important to provide that both the units and the subdivisions enjoy immunity per se, in other words, independently of the State to which they belong; rather, as they are a part of that State and act in exercise of its governmental authority, for the purposes of immunity it should be considered that it is the State itself which acts.

22. In other words, Chile agrees that there should be a certain relationship between the legal institutions of international State responsibility and jurisdictional immunities of States. From that standpoint, it believes that no scope should be left for an interpretation that might lead to the belief that the constituent units of a federal State and the political subdivisions of a State always have or might have a degree of international legal subjectivity independent of that of the State to which they belong.

23. Accordingly, the formula proposed in article 2, paragraph 1 (b) (ii), as reformulated in document A/CN.4/L.584/Add.1, appears to be acceptable. This includes the phrase in brackets, which — because it refers to the important condition that, in order for immunity to be effective, the constituent units of a federal State and the political subdivisions of a State must have acted in exercise of the governmental authority of that State — should also be added to subparagraph (iii) of the article in question.

24. With regard to the term "commercial contract", Chile is of the view that in order to cover the broadest possible range of possibilities, it could be replaced by the term "commercial act", which would include "any commercial operation, commercial obligation and commercial contract". At the same time, Chile shares the view that no express reference should be made to either the nature or the purpose of a contract or transaction in determining its commercial nature, and therefore also believes that article 2, paragraph 2, as contained in document A/CN.4/L.584/Add.1, should be deleted.

25. Chile also supports the idea of making it quite clear in the draft that "nothing in these articles may be interpreted or applied as restricting the privileges and immunities which a State and its agents enjoy under other conventions and general international law", although such a provision would be placed at the end of the text, under "Miscellaneous provisions".

26. A provision concerning the non-retroactivity of the articles would also be placed at the end.

Part II — General principles

27. As indicated above, this part of the draft articles should include the following ideas, successively:

> "(a) A State enjoys immunity, in respect of itself and its property, from the jurisdiction of the courts of another State, except in the cases and under the conditions provided for in the present articles;
>
> "(b) The immunity from jurisdiction of a State shall be considered to have been infringed if a proceeding is instituted against it before a court of another State or if, in another proceeding, measures of constraint are decreed against it or

taken against its property, and for as long as such a proceeding or such measures continue;

"(c) The obligation of the State before whose courts a proceeding of any nature has been instituted against another State or in which, in another proceeding, measures of constraint have been decreed against that State or taken against its property, to respect the immunity from jurisdiction of that State in the respective proceeding;

"(d) Once the immunity from jurisdiction of a State has been recognized, it has an obligation to settle, together with the State that has recognized it, the dispute that gave rise to the proceeding in question by one of the peaceful methods of dispute settlement in force between them;

"(e) Immunity from jurisdiction does not relieve a State of the obligation to respect the laws of the State in which it operates;

"(f) Immunity from jurisdiction is a right of the State which it alone can expressly waive."

28. Accordingly, Chile would be in favour of reformulating articles 5 and 6 of the draft so that one or more of their provisions would reflect the ideas set forth above, it being unnecessary, therefore, to provide further clarifications as to when a proceeding shall be considered to have been instituted against a State or a measure of constraint shall be considered to have been decreed against it or taken against its property.

Part III — Waiver of immunity from jurisdiction

29. Chile is also of the view that the provisions in articles 7, 8 and 9 of the draft should be grouped under the heading "Waiver of immunity from jurisdiction", since what is actually dealt with in those provisions are cases in which the State voluntarily agrees, expressly or implicitly, that despite enjoying immunity from jurisdiction, it and its property shall be subject to the jurisdiction of the courts of another State.

30. Accordingly, the wording of those articles should express the idea that "a State shall be considered to have waived its immunity from jurisdiction" in the cases referred to therein.

31. From this standpoint, Chile supports the idea that article 7 (c) of the draft should state that one of the means of expressing waiver of immunity from jurisdiction or consent to the exercise of jurisdiction by the respective court should simply be "a written statement submitted to the court", without, however, indicating by whom or at what point the statement is to be submitted, so as to ensure the greatest possible flexibility in this regard.

32. Chile also believes that article 8, paragraph 2 (b), of the draft should state more specifically that the purpose of the intervention in question would be "preventing the results of the proceeding from jeopardizing certain rights of the State concerned, which, however, would not become a direct party to the proceeding". This might make it clearer that what is involved is a "mediation" or "third-party intervention" — a situation, therefore, in which immunity from jurisdiction would not be waived.

33. With regard to counter-claims, Chile leans towards the version adopted earlier, with, of course, the drafting changes necessary for the purposes expressed therein, namely, that the situation in question is one in which the State is considered to have waived its immunity from jurisdiction.

34. With regard to the concept of a State enterprise or other entity established by the State in relation to a commercial transaction, Chile notes that the final suggestion contained in paragraph 80 of document A/CN.4/L.584/Add.1 could be acceptable, provided, of course, that its wording is revised to reflect reality to its fullest extent. It would then state clearly and directly that State immunity does not cover commercial acts engaged in by a State enterprise or one in which the State is or has been a shareholder or partner, or by an entity established by the State or to which the State belongs or has belonged, not even if the State has guaranteed or acts as guarantor of compliance with the obligation(s) arising or emanating from such commercial acts.

Part IV — Exceptions to immunity from jurisdiction

35. As noted above, the situations envisaged in articles 11 to 17 of the draft are merely cases in which the State in question simply has no immunity from jurisdiction. Accordingly, what is involved are not situations in which the State "cannot invoke", as the

text puts it, such immunity, but ones in which it simply does not apply.

36. For this reason, it would probably be necessary to introduce a general norm to replace several of those mentioned, stating as follows:

> "Unless otherwise agreed between the States concerned or the parties to the respective contract or agreement, as appropriate, a State shall not be considered to have immunity from jurisdiction in proceedings instituted in courts of another State concerning acts in which it has participated other than in the exercise of its governmental authority and which such courts are entitled to hear and adjudge under private international law. In particular, a State shall not have immunity in proceedings relating to:
>
> (a) Commercial acts engaged in by the State with foreign natural or juridical persons;
>
> (b) The validity or interpretation of an arbitration agreement or an arbitration procedure or the setting aside of the award in any dispute relating to a commercial act;
>
> (c) Actions for compensation for death or injury to a person, or damage to or loss of tangible property, resulting from acts attributable to the State and occurring in that other State;
>
> (d) The exercise by the State of actions or rights connected with the ownership, possession and occupation of immovable and movable property and embodied in or arising from private law norms in that other State;
>
> (e) Fiscal obligations of the State in that other State; and
>
> (f) Cargo carried on board a ship operated by the State, whether owned by it or not, or that ship, which, at the time the cause of action arose, was used or intended for use exclusively for commercial purposes."

37. It would thus be possible to include in a single provision all the similar situations in which State immunity from jurisdiction would not apply and have them sheltered under a general norm, namely, that the State does not enjoy immunity from jurisdiction in cases in which it acts according to *jure gestionis*.

38. Such a general norm, which would thus include certain specific cases by way of illustration, should moreover, be as simple as possible, to allow for its subsequent development in accordance with the jurisprudence and practice of States, particularly in all matters relating to regulatory issues.

39. In addition to the above, another provision should envisage a different situation, in which the State does not enjoy immunity from jurisdiction either, but for different reasons. This would be the provision relating to "contracts of employment entered into between the State and individuals recruited in that other State to perform functions in it, with the exception of contracts entered into for the performance of functions related to the exercise of governmental authority or signed with nationals of the employer State at the time the proceeding is initiated, or with persons who, at the time the contract is signed, are neither nationals nor habitual residents of that other State".

40. On the same topic, Chile shares the views of the Working Group, as set forth in paragraphs 104 and 105 of document A/CN.4/L.584/Add.1, making it clear that what is involved are persons who perform functions related to the exercise of governmental authority. It cannot, however, endorse what is stated in paragraph 106 of that document with regard to deleting subparagraph (c) of paragraph 2 of article 11 of the draft articles. While it is true that such a norm would affect the principle of non-discrimination based on nationality, it is also true that that provision also envisages the case of a person who is not a habitual resident of the State of the forum. This situation is completely different from the previous one and might perhaps be expressed in a different way, namely, that State immunity will apply in cases relating to a contract of employment in which the employee, who is neither a national nor a habitual resident of the State of the forum, entered that State specifically in order to sign that agreement.

41. In addition, because it relates to a completely different situation, another provision should stipulate that "organs, entities or enterprises established by a State with separate legal personality so that their own assets may be liable and they may act not in the exercise of its governmental authority, shall not enjoy the immunity from jurisdiction to which that State is entitled". This provision should perhaps follow the one which proclaims State immunity from jurisdiction as a basic principle.

42. Generally speaking, the foregoing would encompass all the situations provided for in the draft articles, including the specific cases referring to rights over immovable and movable property and, among these, the ones relating to patents of invention, trademarks and other kinds of intellectual property and to participation in companies — all movable rights — without, however, encroaching on the branches of law specifically regulating one or the other.

43. Chile is of the view that the draft articles should not include a provision relating to nationalization, as it is foreign to the central purpose of the draft.

44. It also believes that what is provided for under "measures of constraint" would already be included in the general norms outlined above. Furthermore, it should be kept in mind that measures of constraint against property of a State can only be decreed in the context of a proceeding, which would mean subjecting the State to that proceeding. In this connection, Chile is in favour of first establishing the principle of a prohibition on execution and then stating the specific exceptions thereto, as currently set forth in article 18 of the draft articles. This does not preclude adding to those exceptions the ones provided for in paragraph 127 (c) and (d) of document A/CN.4/L.584/Add.1, namely, "measures available under internationally accepted provisions" and "measures involving property of an agency enjoying separate legal personality if it is the respondent of the claim".

45. On the other hand, Chile is in favour of having the provision concerning State property — which, barring agreement or consent to the contrary, should not be sheltered under the immunity from jurisdiction of the State — appear as a special provision following the general norm which establishes the situations in which the State does not enjoy immunity from jurisdiction.

46. Chile is also of the view that the provision referring to the special property which is not considered to be used or intended for use by the State for commercial purposes should be included after the above-mentioned one.

47. Lastly, Chile does not see the practical utility of distinguishing between prejudgement measures and post-judgement measures. In the first place, the draft articles are not intended as a set of norms on judicial procedure. Secondly, it is not clear whether prejudgement measures include so-called prejudicial ones — in other words, measures adopted prior to the proceeding as such — or only so-called precautionary ones, adopted in the context of the respective proceeding. Thirdly, post-judgement measures are inherent in what is known as execution of judgements. All of this, as has been implied, goes beyond the scope of the draft articles. Nor, by the same token, does Chile endorse the idea at the current stage of the work of providing variants regarding compliance by the State with the judgement, as set out in paragraph 129 of document A/CN.4/L.584/Add.1. It prefers, rather, that the draft articles not deal with any of these possibilities.

Miscellaneous provisions

48. Chile wholeheartedly supports the formula proposed by the Special Rapporteur under this heading, to the effect that: "Unless otherwise agreed, notification of the institution of a proceeding against a State or the decree of measures of constraint against it or its property shall be effected through the diplomatic channel."

49. In this connection, Chile wishes to suggest that another provision be added, stating that "the State shall also assert its immunity from jurisdiction through the Ministry of Foreign Affairs of the State of the forum". In other words, what should be crystal clear is that the State is under no obligation to submit, except in the cases referred to above, to the jurisdiction of a court of another State, not even in order to assert its immunity from jurisdiction, and that if this is not respected, the matter becomes a diplomatic one, in other words, an issue between the States concerned and not between the organs of the two States.

50. With reference to what the draft articles term a "default judgement", Chile is of the view that this provision should not appear in the text. If the State has immunity from jurisdiction, the judgement would not impede or affect it in any way, and if it does not have immunity from jurisdiction, it would have to conform to the respective procedural norms, which include periods for service of process.

51. Moreover, Chile considers that what is set forth in the draft articles regarding measures of constraint has been incorporated into the suggestions it made above, particularly with regard to general principles.

52. Likewise, Chile is of the view that the provision in the draft articles concerning "procedural

immunities" does not appear to be necessary, in that it is implied in the very concept of immunity from jurisdiction.

53. With regard to the provision relating to "non-discrimination", Chile believes that it could be redundant and should therefore be deleted.

54. Lastly, Chile would not consider it essential that, in the context of a set of draft articles on jurisdictional immunities, an effort be made to regulate a system for settling disputes arising from the interpretation or application of the articles. In view of its complexity, it would be better if the topic of dispute settlement were discussed separately, thus preventing any doubts or hesitations on the subject from impeding the adoption or ratification of the respective treaty.

Conclusions

55. By means of the foregoing, Chile has sought to demonstrate the priority it attaches to the topic in question and to an international convention that would clarify not only the current status of customary law, but also the degree of consensus reached by States in this regard.

56. From this standpoint, what Chile is proposing is not the enshrinement of the theory either of absolute immunity or of restrictive immunity, but rather that the draft articles should reflect what is actually the subject of agreement, namely, that in the absence of a uniform practice among States, it is necessary to determine, as far as possible, what is meant by immunity from jurisdiction and what exceptions there are to it.

57. In a similar vein, Chile wishes to reiterate that the work involved in the preparation of a set of draft articles like the one under consideration means not only that the text must reflect international custom in this area, but also that it must allow for the progressive development of the relevant norms. This is all on condition, however, that such an effort, and the norms arising from it, do not constitute a source of conflict in their own right.

58. To this end, it must be recognized that while the law cannot define certain concepts at times, that does not mean that the realities which such concepts are intended to reflect do not exist. This is true, for example, of the concepts of *jure imperii* and *jure gestionis* in the topic under consideration.

59. If the foregoing is accepted, it might be possible to trust that the norms by which we seek to regulate various aspects of the conduct of States will be developed in the framework of their underlying logic and will thus serve the purposes for which they are established.

Libyan Arab Jamahiriya

[Original: Arabic]
[27 June 2000]

The Libyan Arab Jamahiriya submitted the following:

Act No. 21 of 1954 on Privileges and Immunities, 27 April 1954

We Idris I, King of the United Kingdom of Libya,

The Senate and the House of Representatives having approved the Act on Privileges and Immunities of 1954 set forth below, have endorsed and promulgated it:

Section I
Diplomatic representatives

Article 1
Immunity of the diplomatic representative and inviolability of his residence, his office and his papers

A diplomatic representative in Libya shall enjoy the following immunities accorded by international law to representatives of foreign States:

(a) Immunity in respect of prosecution and the institution of legal proceedings against him;

(b) Inviolability of his residence, his office and his official papers.

Article 2
Exemption from taxation

A diplomatic representative shall be exempt from payment of taxes on his salary or on income accruing to him from his official activities or from sources outside the United Kingdom of Libya.

Article 3
Dues

A diplomatic representative shall be exempt from payment of local and other similar dues with regard to his residence or office, except those paid in respect of services. He shall also be exempt from licensing and registration taxes with regard to his residence, automobile, wireless receiver, weaponry, dogs or hunting equipment.

Article 4
Customs duties

1. He shall be exempt from inspection of diplomatic property belonging to the diplomatic mission and from payment of customs duties on items imported for his personal or official use.

2. Other diplomatic representatives shall be exempt from inspection of their property and from customs duties in accordance with measures to be determined by the Minister for Foreign Affairs in accordance with the principle of reciprocity.

Article 5
Persons enjoying diplomatic immunity and privileges

1. For the purpose of this Act, the term "diplomatic representative" means:

(a) The head of a foreign diplomatic mission;

(b) Any of the members of the diplomatic staff of the mission.

2. The members of the staff of the mission employed directly by the head of the mission shall enjoy the privileges and immunities set forth in articles 1 and 2. However, a staff member or servant who is not of the nationality of the sending State shall not enjoy any of the privileges and immunities provided for in section I of this Act, with the exception of immunity from prosecution or legal action against him in any matter related to actions performed in the course of the performance of his official duties.

Section II
Consular officers

Article 6
Immunity of consular officers

A consular officer in Libya shall enjoy:

(a) Immunity from legal proceedings in respect of actions performed in his official capacity;

(b) Inviolability of his official papers.

Article 7
Exemption from taxation and customs duties

A consular representative shall be exempt from taxation on his salary and any income accruing from his official actions. He shall be exempt from payment of customs duties on items imported for his official use and, within reasonable limits, on items imported for his personal use during the first 12 months following his arrival in Libya, provided that the Minister for Foreign Affairs approves exemption measures on the principle of reciprocity.

Article 8
Persons enjoying consular immunities and privileges

1. For the purpose of this Act, the term "consular officer" means a consul-general, a consul, a vice-consul or consular agent as appointed by the foreign State.

2. An official member of the consular staff assigned to the consular officer shall enjoy the privileges and immunities accorded in articles 6 and 7, with the proviso that a member of the consular staff who is not of the nationality of the sending State shall enjoy only the immunities provided for in article 6 of this Act.

Section III
International organizations

Article 9
International and intergovernmental organizations

The United Nations, the specialized agencies and intergovernmental or international organizations to which the Minister for Foreign Affairs shall apply the provisions of this article by an order promulgated by him shall enjoy all the privileges and immunities enjoyed by the heads of diplomatic missions under section I of this Act, and the publications of the United Nations and the above-mentioned agencies and organizations and their imports and exports utilized for their official purposes shall be exempt from restrictions.

Article 10
Legal persons

The United Nations, the specialized agencies and international or intergovernmental organizations to which the Minister for Foreign Affairs shall apply the provisions of this article by an order promulgated by him shall enjoy legal personality in Libya.

Article 11
Personal representative of the Secretary-General and judges of the United Nations

The personal representative in Libya of the Secretary-General of the United Nations and judges of the United Nations court in Libya shall enjoy the privileges and immunities enjoyed by heads of diplomatic missions under section I of this Act.

Article 12
Members of staff

Members of the staff of the United Nations and of other organizations or bodies designated by the Minister for Foreign Affairs by an order to be promulgated by him under article 9 of this Act shall enjoy the privileges and immunities set forth in articles 6 and 7 of the Act.

Section IV
General provisions

Article 13
Other privileges and immunities

Diplomatic representatives, consular officers, the organizations, bodies and persons mentioned in section III of this Act and other persons shall enjoy the other privileges and immunities accorded them by international law or any agreement to which Libya is a party.

Article 14
Spouses and children

Spouses and unmarried children under the age of 18 and unmarried daughters over 18 years of age shall enjoy the privileges and immunities of a diplomatic representative, and the same provision shall apply to the spouses and children of staff directly employed by the head of the diplomatic mission and the persons referred to in article 11.

Article 15
Waiver of immunities

The persons referred to in sections I and II of this Act and their spouses, children and servants shall not enjoy immunities if the head of the mission waives their immunity. The organizations, bodies and persons, and their spouses, children and servants, referred to in section III of this Act, shall not enjoy immunities if the organization, body or person waives such immunity or if such immunity is waived.

Article 16
Refusal to grant immunities and privileges

The provisions of this Act shall not preclude the refusal of the Government to grant privileges or immunities to any diplomatic representative or consular officer of any State that does not grant reciprocal privileges or immunities to the diplomatic representatives or consular officers or staff members of Libya.

Article 17
Testimony of the Minister

Where the issue of a privilege or immunity or of any person or body is raised in any court or in any other manner, the testimony of the Ministry of Foreign Affairs shall be deemed to be conclusive.

Article 18
Abrogation

Declaration No. 208 of 1950 on Immunities and Privileges issued at Tripoli and Act No. 21 of 1951 on the Privileges and Immunities of the United Nations promulgated at Barca are hereby abrogated.

Article 19
Name of the Act and entry into force

This Act shall be called "the Act on Privileges and Immunities of 1954" and shall enter into force from the date of its publication in the *Official Gazette*.

Pakistan

[Original: English]
[27 July 2000]

1. The doctrine of State immunity reached its culmination towards the end of the nineteenth century

when the laissez-faire doctrine was in vogue. In the beginning of the twentieth century, the laissez-faire doctrine began to decline with the spread of protectionism as well as intervention in economic life. The First World War lent impetus to the trend of State control over the economy. Meanwhile, the Russian revolution in 1917 was followed by State monopoly of foreign trade in the Soviet Union. State control of production and international trade, in particular of war materials and raw materials, thus became a common feature in the years following the First World War. Ever since there has been increasing involvement of the State in international trade and economic relations.

2. This prompted some States to re-examine the doctrine of State immunity. The trend in recent years seems to be that a distinction is made between *acta jure imperii* and *acta jure gestionis*. This trend has been strengthened recently and the United Kingdom of Great Britain and Northern Ireland, the United States of America, the European Union and various other States have joined this trend. Pakistan also enacted legislation along the same lines in 1981 in the State Immunity Ordinance (VI) of 1981.

3. The work of the International Law Commission over the years also emphasizes that it is essentially commercial activities of States in respect of which the immunities enjoyed by States are no longer considered to be justified. The detailed provisions relating to the commercial character of a contract or transaction drafted by the International Law Commission and its Working Group also clearly support this.

4. The dilution of State immunity in respect of claims for pecuniary compensation for death or injury to the person, or damage to or loss of tangible property, caused by an act or omission attributable to the State in terms of article 12 of the text of the draft Convention has no basis in this evolution and would cause a great deal of friction between some developed countries where there is a strong tradition of tort litigation and developing countries, which would have to face expensive litigation which would definitely prove to be a source of friction between the two. Moreover, the provision makes no distinction between *acta jure imperii* and *acta jure gestionis*. It should therefore be deleted in order to make the draft Convention acceptable to a majority of States.

Saudi Arabia

[Original: Arabic and English]
[28 April 2000]

Comments on the draft articles

1. With regard to article 2 of the draft convention concerning the determination of the commercial character of the contract or transaction, both the nature of the contract or transaction and its purpose should be taken into consideration. No single criterion should be exclusively applied.

2. The draft convention should include an article establishing a mechanism for resolving differences between States regarding the interpretation or application of the draft convention.

Notes

[1] *Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 10* and corrigenda (A/54/10 and Corr.1 and 2).